

MINUTES

**MONTANA SENATE
58th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON BUSINESS AND LABOR

Call to Order: By **CHAIRMAN DALE MAHLUM**, on February 17, 2003 at 9 A.M., in Room 422 Capitol.

ROLL CALL

Members Present:

Sen. Dale Mahlum, Chairman (R)
Sen. Mike Sprague, Vice Chairman (R)
Sen. Sherm Anderson (R)
Sen. Vicki Cocchiarella (D)
Sen. Kelly Gebhardt (R)
Sen. Ken (Kim) Hansen (D)
Sen. Glenn Roush (D)
Sen. Don Ryan (D)
Sen. Carolyn Squires (D)

Members Excused: Sen. Bob Keenan (R)
Sen. Sam Kitzenberg (R)
Sen. Fred Thomas (R)

Members Absent: None.

Staff Present: Sherrie Handel, Committee Secretary
Eddy McClure, Legislative Branch

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: SB 342, 2/6/2003; SB 344, 2/6/2003
Executive Action: SB 344; SB 140

{Tape: 1; Side: A}

HEARING ON SB 342

Sponsor: SENATOR MIKE WHEAT, SD 14, GALLATIN COUNTY

Proponents: Jerry Driscoll, AFL/CIO; Jane Egan, Montana Society of CPA's; Brenda Elias, State Auditor's Office

Opponents: John Alke, Montana-Dakota Utilities Company; Joe Mazurek, D.A. Davidson; Aidan Myhre, Montana Chamber of Commerce; Cory Swanson, Plum Creek Timber Company

Informational Witnesses:
Carroll South, Montana Board of Investments; Pat Haffey, Secretary of State's Office

Opening Statement by Sponsor:

SENATOR MIKE WHEAT, SD 14, GALLATIN COUNTY, opened by saying he had a simple bill, which was what he called Montana's counterpart to the federal Sarbanes-Oxley Act of 2002. It holds corporations accountable requiring retention of audit reports and financial statements. This bill proposes to require any publicly traded corporation that is required to file an annual report with the state of Montana to file some certification that they have complied with Sarbanes-Oxley. Under Section 2, it also would require these same publicly traded corporations wishing to do business in Montana shall retain all audit reports and financial statements. Section 3, Enforcement, is permissive on the part of the Auditor's office; it is not mandatory. It gives powers to the state Auditor, should that office choose to conduct an investigation. The other thing the bill would do is, if a publicly traded corporation does not comply with Sarbanes-Oxley, then the state of Montana is prohibited from doing business with or investing in that company.

Proponents' Testimony:

Jerry Driscoll, AFL/CIO, said the President pushed Sarbanes-Oxley through Congress after the Enron fiasco with pensions and this bill would do the same thing in Montana. He felt it was a good bill and urged a do pass recommendation from the committee.

Jane Egan, Montana Society of CPA's, thanked **SEN. WHEAT** for working with her organization to amend his bill. They stood in support of the bill and stated her belief in corporate accountability. She also thought it was a good thing for the state of Montana.

Brenda Elias, State Auditor's Office, stood in support of the bill in the interest of investor protection. If passed, the State Auditor's Office would have the enforcement authority to oversee compliance with this bill. They would rely on the Secretary of State's Office to communicate with her office in the event that any corporation is not in compliance. They would also work with the Securities and Exchange Commission to ensure that companies come into compliance.

Opponents' Testimony:

John Alke, Montana-Dakota Utilities Company, did not profess to be an expert on Sarbanes-Oxley. He ventured that very few people present would know a great deal about it, which is what he thought was the problem with the bill. His organization had no position on provisions regarding the regulation of accounts; they had no position on provisions suggesting that the state should not invest in corporations that violate Sarbanes-Oxley. Their concerns were the first three sections of the bill. Their concern reflected the fact that Sarbanes-Oxley is directed primarily at the accounting profession. As **Mr. Driscoll** said, this bill was a result of the collapse of Enron. When you are dealing with publicly traded organizations, the Securities and Exchange Commission's entire regulatory scheme for protecting investors from unscrupulous corporations relies on the accounting profession. It is the documents prepared by the accounting profession which the SEC relies and builds their regulatory regime on for purposes of protecting investors. Sarbanes-Oxley is directed at the accounting profession that audits these publicly traded corporations. He stated that is the problem with the bill and went on to discuss each section.

Joe Mazurek, D.A. Davidson, thought Sarbanes-Oxley a good thing. It will bring about corporate accountability and responsibility, and, as a member of the board of directors of a publicly traded company in Montana, he said he could tell the committee that corporations are very serious about complying with the requirements of Sarbanes-Oxley. What concerned him about the bill was that it would set up a whole new administrative structure, and he did not see the necessity of setting up an entirely new administrative structure to impose this duplicate filing requirement. **Mr. Mazurek** discussed the significant enforcement mechanism in the bill allowing the issuance of subpoenas, compelling testimony, conducting hearings and investigations for the ultimate purpose of notifying the Secretary of State, so virtually all of the enforcement responsibility would be left to the federal government. He asked that Sections 1 through 3 of the bill be deleted.

Aidan Myhre, Montana Chamber of Commerce, stated some compliance and regulations belong in federal law. She thought it very challenging to duplicate federal legislation at the state level. She encouraged the committee to allow Sarbanes-Oxley to work at the federal level.

Cory Swanson, Plum Creek Timber Company, said they are a publicly traded company operating in multiple states. They were opposed to the bill for the reasons previously expressed.

Informational Witness Testimony:

Carroll South, Montana Board of Investments, stated their belief in the concept of the bill and didn't think the state of Montana should be doing business with corporations that violate federal law nor should they make investments that violate federal law. However, as written, the bill could cause some serious ramifications on the state's \$8.6B investment portfolio. He went on to discuss that portfolio. **Mr. South** distributed proposed amendments to the bill, **EXHIBIT (bus35a01)**.

{Tape: 1; Side: B}

Mr. South explained his proposed amendments.

Pat Haffey, Secretary of State's Office, verified the role that the Secretary of State provides in this bill would be for record keeping only.

Questions from Committee Members and Responses:

SEN. VICKI COCCHIARELLA asked **Mr. South** to respond to comments made about Sections 1, 2 and 3 and if he had any concerns with them. **Mr. South** said most of those with whom his department interacts don't register in the state of Montana, so it's not applicable. She then inquired of the sponsor his reaction to the issues raised with Sections 1, 2 and 3. **SEN. WHEAT** replied that his intent was that a publicly traded company wishing to do business with the state of Montana should file an annual report with the state, that they certify with Sarbanes-Oxley. In checking with the Secretary of State's office, there would just be a box put on the form that would ask the company if they had complied with Sarbanes-Oxley. With regard to retention of auditing and financial reports, they have to do just that in accordance with Sarbanes-Oxley. That section was amended with the assistance of the CPA's. Under the enforcement section, it was never his intent to have the Auditor's Office, in every instance, conduct an investigation. It would simply be left to

their discretion. He did not share the concerns of the proponents.

SEN. MIKE SPRAGUE wanted to know why there should be dual layers of enforcement. **SEN. WHEAT** was not able to give him an answer. When drafting the legislation, he relied upon a piece of legislation from Connecticut.

Mr. Alke was asked by **SEN. SPRAGUE** about compliance and non-compliance. **Mr. Alke** reiterated that he was not an expert on Sarbanes-Oxley. He quoted from Sarbanes-Oxley regarding his point that accountants, not corporations, are included in that legislation.

The sponsor was asked by **SEN. SHERM ANDERSON** if he thought the state auditor has the authority, if a question arose about a company, to go to the federal level and find out instantly whether this company was in compliance with Sarbanes-Oxley. **SEN. WHEAT** answered in the affirmative and said the state may not need the duplication of the federal legislation.

SEN. KEN HANSEN wanted an explanation from the sponsor about where the funding comes from for an investigation. **SEN. WHEAT** replied it would come from the auditor's office.

Ms. Elias was asked by **SEN. COCCHIARELLA** if she knew the Sarbanes-Oxley law. **Ms. Elias** was somewhat familiar with the law. She explained how her office relies on the Securities and Exchange Commission for investigations for publicly traded companies. Unless this bill is passed and unless her office receives notification of non-compliance by a company, they would not get involved. She wasn't able to say how many cases of non-compliance would arise. She offered to get more information for **SEN. COCCHIARELLA**.

SEN. SPRAGUE wanted to know if the Auditor's office requested this bill. They did not, according to **Ms. Elias**.

Closing by Sponsor:

SEN. WHEAT felt that, based that what happened with Enron and this state, that Sarbanes-Oxley was a good step on the part of the federal government to require corporations to be accountable financially. He thought it important to require companies to be in compliance with Sarbanes-Oxley. He offered to amend the bill to put together a statute that would allow the legislature to send a message to all of the publicly traded corporations that want to do business or be invested in by the state that they should be in compliance with Sarbanes-Oxley.

{Tape: 2; Side: A}

SEN. WHEAT addressed **Mr. Alke's** concerns with Section 2 as it was written. It was not the sponsor's intent to make corporations maintain these financial statements, and he offered to change that section. He commented positively on the amendment brought by **Mr. South**. He thought this was a good first step in making a policy statement on behalf of the state.

HEARING ON SB 344

Sponsor: **SENATOR RICK LAIBLE, SD 30, BITTERROOT VALLEY**

Proponents: **Jacqueline Lenmark, American Council of Life Insurers**

Opponents: **None**

Opening Statement by Sponsor:

SENATOR RICK LAIBLE, SD 30, BITTERROOT VALLEY, said this bill reduces the minimum non-forfeiture amount to 1.5 percent from the current 3 percent per year. Non-forfeiture values are the value of a life insurance policy if it's cancelled either for cash or another form of insurance. He shared that this bill deals with the fixed-rate annuity products and is mostly clean-up language. He said the market has necessitated the need for this reduction. Annuity products will always retain their value plus 1.5 percent.

Proponents' Testimony:

Jacqueline Lenmark, American Council of Life Insurers, expressed appreciation to **SEN. LAIBLE** for his willingness to bring this matter forward. Nineteen states have passed this legislation. It is pending now in another 19 states. Two states do not have this law at all. This is an issue of importance to life insurance companies. She said the National Association of Insurance Companies and insurance companies have worked closely on developing a solution that would allow these products to continue to be offered during this economic downturn. She explained what the legislation does, which is to reduce that 3 percent minimum to 1.5 percent. **Ms. Lenmark** emphasized that is a minimum, not a required interest rate, but simply a floor beyond which the interest cannot go. Not all life insurers will use this rate; it will vary from product design to product design and from company to company. It is the guaranteed rate in our statute to protect customers below which the rate will not fall.

Ms. Lenmark distributed a handout to answer questions the committee might have, **EXHIBIT (bus35a02)**.

Opponents' Testimony: None

Questions from Committee Members and Responses:

SEN. VICKI COCCHIARELLA asked **Ms. Lenmark** if this rate would be raised back to 3 percent in better economic times. What **Ms. Lenmark** said she had been hopeful she could bring forth at this session, but was certain she could bring forth at the next legislative session, was a bill that is being worked on by the insurance industry so this issue would be permanently addressed.

SEN. MIKE SPRAGUE wanted to know if the rate is 1.5 percent in the legislation passed by other states. **Ms. Lenmark** replied it is 1.5 percent in all but one state. That one state is at one percent. He also wanted to know if annuities could be purchased at this time. As the economy has not recovered, **Ms. Lenmark** said the availability of the product is disappearing from the market. Agents sell what they have available to them to sell.

SEN. DON RYAN asked for an explanation from **Ms. Lenmark** of Section 3, line 18 of page 2, where it said "renewed." She thought it may have been an oversight in her proofreading. It is not the intent of this legislation to affect contracts that have already been issued. She had no objection to that being amended.

CHAIRMAN DALE MAHLUM discussed whether or not many insurance companies go out and compete for these contracts. **Ms. Lenmark** remarked that they do. These contracts are used in a variety of different ways. They are used for personal investment estate planning, by lawyers when they are settling lawsuits, by retirement plans as an investment vehicle, by individual for their retirement plan.

In response to **SEN. SPRAGUE'S** next question, **Ms. Lenmark** reassured the committee that, regardless of this law, an insurance company can say we will guarantee the minimum is going to be a higher number. This bill says an insurance company may not go below that number. Once this product is sold, it's sold to the consumer on certain terms, and you know those terms at the time you purchase the product. Those terms cannot be changed by the company after you make the purchases.

SEN. GLENN ROUSH raised concerns about his own situation where he constantly has forms sent to him and he understands that the insurance company cannot change the guaranteed interest stated in the contract; however, could the forms he continually receives

not allow a change to still happen. **Ms. Lenmark** was not certain about the practice he described. This bill only applies to individual, fixed annuities.

{Tape: 2; Side: B}

Closing by Sponsor:

SEN. LAIBLE thanked the committee for a good hearing.

EXECUTIVE ACTION ON SB 344

Motion/Vote: **SEN. COCCHIARELLA** moved that SB 344 DO PASS AS AMENDED, **EXHIBIT**(bus35a03) (SB034401.aem). Motion carried 9-0.

EXECUTIVE ACTION ON SB 140

Motion/Vote: **SEN. SPRAGUE** moved that SB 140 BE INDEFINITELY POSTPONED. Motion carried 8-1 with MAHLUM voting no.

ADJOURNMENT

Adjournment: 10:47 A.M.

SEN. DALE MAHLUM, Chairman

SHERRIE HANDEL, Secretary

DM/SH

EXHIBIT (bus35aad)